

APPEAL NO. 010648

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 2, 2001, a hearing was held. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th, 11th, and 12th quarters. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the claimant sustained a compensable injury on _____, and that he has an impairment rating of 15% or greater. There is no appeal of the hearing officer's finding that during the relevant qualifying periods the claimant's unemployment was a direct result of the impairment from his compensable injury. It is undisputed that the claimant did not work, nor look for work, during the relevant qualifying periods. The claimant claimed that he had no ability to work during the relevant qualifying periods. The claimant's treating doctor, Dr. R, reported that the claimant is unable to work due to failed back syndrome and depression. There is conflicting evidence in this case with regard to whether the claimant had some ability to work during the relevant qualifying periods. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's finding that during the relevant qualifying periods, the claimant had an ability to perform some type of work is supported by the reports of Dr. D, who examined the claimant at the carrier's request, and the report of a functional capacity evaluation done on October 23, 2000. The hearing officer did not err in determining that the claimant did not make a good faith effort to look for work during the relevant qualifying periods and that the claimant is not entitled to SIBs for the 10th, 11th, and 12th quarters. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge